

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9124 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

LUVANA (THAKKAR) NARESH VALJIBHAI

Versus

DISTRICT MAGISTRATE

-----

Appearance:

MS DR KACHHAVAH for Petitioner

MR KAMAL M. MEHTA, APP for Respondent No. 1, 2, 3

-----

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/03/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenu, calls in question the legality and validity of the detention order, passed by the District Magistrate, Surendranagar, on 17th October, 1997 invoking his powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short "the Act"); consequent upon which the petitioner came to be arrested and at present he is under detention.

2. In order to appreciate the rival contentions, necessary facts in brief may be stated. The District Magistrate at Surendranagar came to know during the performance of his duty that the petitioner was a bootlegger and was dealing in liquor in huge quantity without any pass or permit. He, therefore, thought it fit to examine the record of the different Police Stations under him. The D.S.P. after examining the record found that about the seven complaints of the offences under the Bombay Prohibition Act were lodged with Dhrangadhra City Police Station and Dhrangadhra Taluka Police Station. The petitioner in those cases alleged to have committed the offences punishable under Sections 66(1)(b), 65(e) and 65(f) of the Bombay Prohibition Act. As he was found in possession of liquor which was ranging from 4 Litres to 40 Litres, and was selling and providing to different persons through different agencies, the public life was considerably affected, and remained disturbed. Mischief with the general health was played. He wanted to expand his liquor business putting people to several hazards. The District Magistrate, found that the public order was being disturbed, because whoever came in the way of the petitioner, had to lick the dust because the petitioner used to retaliate badly. He was beating, torturing, abusing, molesting and making the persons to bend in his way. Because of his riotous and discommodious activities, no one was ready to come forward or to make statement against him. As every one was apprehending danger to his safety and feeling insecured, after considerable, persuasion, and assurance that necessary particulars disclosing their identity would be withheld and would not be disclosed, some of the witnesses came forward to state against the petitioner. After detailed inquiry, the District Magistrate of Surendranagar found that nefarious activities of the petitioner shattering and battering public life and leading to anarchy were going berserk. The petitioner was required to be checked immediately. He thought of different remedial measures available in law so as to curb his subversive activities, but the general law was sounding dull, and the only way found just and most effective was to pass the order of detention and detain the petitioner for certain times. He, therefore, passed the impugned order, consequent upon which the petitioner is at present under detention.

3. The learned advocate representing the petitioner has on three to four grounds challenged the order making submissions, but when a query was made, he tapered off his submissions confining to the only point namely

maintenance of the public order. According to her, by aforesaid four complaints lodged against the petitioner, the public order would never be disturbed and those cases can be dealt with effectively under the general law. Mr. Kamal Mehta, the learned APP has supported the order submitting that no illegality has been committed and every thing has been done quite in consonance with law in all respect before passing the order. According to him, this will never be the case of law & order; but certainly about maintenance of public order. He, then urged to dismiss the petition.

4. When both have confined to the only point about maintenance of the public order, I will confine to the said ground alone going to the root of the case. It may be stated what the Supreme Court has made clear on the point. In the case of Piyush Kantilal Mehta Versus Commissioner of Police, Ahmedabad City and Another, AIR 1989 SC 491, it is laid down that even if the detenu is held to be the bootlegger within the meaning of Sec.2(b) of the Act, by mere that fact, he cannot be detained unless it is found that his activities as a bootlegger disturb or likely to disturb the public order. A person may be brutal or ferocious, but so long as by his acts or activities public life is not disquieted or upset, the question about the maintenance of public order does not arise. There must be the material to show that there has been a feeling of in security amongst the general public or it must be shown that the acts of the person create panic or fear in the minds of the people upsetting the tempo of life of the community. One offence if committed by the person, or there may be few cases where the person might have caused harm to someone or used force or violence, the same will not amount to indulging in anti-social activities shattering and battering public order, and will not be a ground to detain him. Likewise the person may be the fierce by nature or head-strong or pugnacious or barbarous or swashbuckler, or not afraid of police or keeping a knife, or a weapon, but so long as his activities or acts do not create the feeling of insecurity, or panic, or terror in the public of the area in question, or disturb public order, he cannot be detained. Following that decision, this court has also taken the same view in the case of Amrat Rambhai Vaghari Versus Commissioner of Police Ahmedabad and Others, 1995(2) G.L.H. 874.

5. In this case, on the basis of the aforesaid seven complaints, it is sought to be canvassed that by his bootlegging activities, the public order was being disturbed, because, at times, the petitioner was beating

the people, or giving threats to them or running amok so as to have sale of liquor smoothly, but there is nothing on record indicating that by his such acts, people were feeling insecured or he had created a panic, upsetting the tempo of the life of the community. It may, however, be stated that such few or minor incidents will not give rise to the question of maintenance of public order as made clear by the Supreme Court in the aforesaid decision. Consequently the detention order cannot be maintained. The same being illegal is required to be quashed.

6. For the aforesaid reasons, this petition is allowed. The order of detention passed on 17th October, 1997 by the District Magistrate, Surendranagar City, is hereby quashed and set aside, and the petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule accordingly made absolute.

\*\*\*\*\*

saiyed\*